

**Case Officer:** Matthew Chadwick

**Applicant:** J Sweeny

**Proposal:** Change of Use of land to a 6no pitch Gypsy and Traveller site to include 6no mobiles, 6no tourers and associated operational development including hardstanding and fencing

**Ward:** Launton And Otmoor

**Councillors:** Councillor Hallchurch, Councillor Holland and Councillor Hughes

**Reason for Referral:** Major Development

**Expiry Date:** 1 October 2020

**Committee Date:** 8 October 2020

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**EXECUTIVE SUMMARY OF PROPOSALS AND RECOMMENDATION**

**RECOMMENDATION: REFUSE PERMISSION**

**Proposal**

Planning consent is sought for the change of use of land to a 6no pitch Gypsy and Traveller site to include 6no mobiles, 6no tourers and associated operational development including hardstanding and fencing

**Consultations**

The following consultees have raised **objections** to the application:

- Piddington Parish Council, CPRE, OCC Highways

The following consultees have raised **no objections** to the application:

- CDC Environmental Health, CDC Landscape Services, CDC Planning Policy, CDC Strategic Housing

48 letters of objection have been received.

**Planning Policy and Constraints**

The site is located in an area of potentially contaminated land and protected species have been located in close proximity of the site.

The application has also been assessed against the relevant policies in the NPPF, the adopted Local Plan and other relevant guidance as listed in detail at Section 8 of the report.

**Conclusion**

The key issues arising from the application details are:

- Principle of Development
- Need for pitches
- Visual Impact and Effect on Landscape Character;
- Residential Amenity;
- Ecological Impact;
- Highway Safety;

- Flooding Risk and Drainage;
- Other Matters

The report looks into the key planning issues in detail, and Officers conclude that the proposal is unacceptable for the following reasons:

1. Visual harm due to intrusion into open countryside
2. Flood risk
3. Ecological harm

**Members are advised that the above is a summary of the proposals and key issues contained in the main report below which provides full details of all consultation responses, planning policies, the Officer's assessment and recommendations, and Members are advised that this summary should be read in conjunction with the detailed report.**

## **MAIN REPORT**

### **1. APPLICATION SITE AND LOCALITY**

- 1.1. The application site is located approximately 1km to the west of the village of Piddington, 1.5km to the east of Upper Arccott and 3km from the village of Ambrosden. The B4011 lies approximately 35m to the west of the site and to the west of the B4011 lies HM Prison Bullingdon. The site of the proposed development is an agricultural field which is currently laid to grass. The site is enclosed on the road side frontage by mature native hedgerow to the northern boundary and the southern boundary is also made up of a mature native hedgerow.

### **2. CONSTRAINTS**

- 2.1. The site is not in close proximity to any listed buildings and is not located within a conservation area. The site has some ecological value due to recent recordings of protected species within the vicinity of the site, including common mouse-ear and Dunnocks. Piddington Training Area District Wildlife Site lies approximately 250m to the south east of the site.

### **3. DESCRIPTION OF PROPOSED DEVELOPMENT**

- 3.1. This application seeks planning permission for the change of use of the land to be used as a gypsy and traveller caravan site comprising 6 pitches, each pitch containing one mobile home and one touring caravan. The submitted plan shows an existing access; however, at the time of the site visit no such access existed. The access in this location would be approximately 9.5m wide to allow for two-way traffic. The proposal also includes construction of a driveway through the site and each pitch can be accessed from the main site driveway. The site access is to be hard surfaced and the driveways within the site would be constructed from permeable materials. A paddock area is proposed in the south-western corner of the site. Foul sewerage would be provided by way of a water treatment plant, of which details have been submitted with the application.

### **4. RELEVANT PLANNING HISTORY**

- 4.1. The following planning history is considered relevant to the current proposal:

17/00145/F - Change of use of land to use as a residential caravan site for 16 gypsy/ traveller families, each with two caravans, including improvement of access and laying of hardstanding – Application Refused

17/01962/F - Material change of use of land to use as a residential caravan site for 6 gypsy families, each with two caravans, including improvement of access and laying of hardstanding – Application Refused. Decision appealed and appeal allowed.

4.2. These applications were located on the site immediately adjacent to the east of the application site. There is currently an application under consideration on this site (20/01122/F).

## **5. PRE-APPLICATION DISCUSSIONS**

5.1. No pre-application discussions have taken place with regard to this proposal.

## **6. RESPONSE TO PUBLICITY**

6.1. This application has been publicised by way of a site notice displayed near the site, by advertisement in the local newspaper, and by letters sent to all properties immediately adjoining the application site that the Council has been able to identify from its records. The final date for comments was **18 August 2020**, although comments received after this date and before finalising this report have also been taken into account.

6.2. The comments raised by third parties are summarised as follows:

- There are traveller sites in other surrounding villages.
- If the approved application and currently submitted applications were approved, there would be an overprovision of traveller sites in Piddington, which is a Category C village.
- The previously approved scheme should be implemented first.
- There is no need for any extra pitches across Cherwell at the present time.
- The need for pitches has been miscalculated.
- The site is not sustainable.
- The site is next to a MoD training ground and residents will be subject to loud noises.
- The development would cause harm to the safety of the local highway network.
- The development would cause harm to local ecology.
- The land is prone to flooding.

6.3. The comments received can be viewed in full on the Council's website, via the online Planning Register.

## **7. RESPONSE TO CONSULTATION**

7.1. Below is a summary of the consultation responses received at the time of writing this report. Responses are available to view in full on the Council's website, via the online Planning Register.

PARISH/TOWN COUNCIL AND NEIGHBOURHOOD FORUMS

- 7.2. PIDDINGTON PARISH COUNCIL: **Objects.** Permission already exists for 6 pitches on the same parcel of land [*Officer comment – the permission is on an adjacent site*]; an application for a further 6 pitches (20/01122/F) on this site is yet to be determined, making 18 pitches in all with this application. The population of the site would be in the region of 108 people. This would dominate the nearest settled community of Piddington which currently has a population of only 370. It would represent unsustainable development and would place undue pressure on the local infrastructure. The assessment of need is out of date, unsound and disputed and CDC has a more-than-adequate supply for the next five years. CDC has failed to identify suitable sites in its Local Plan and so exposes rural communities to speculative applications like this application.

#### OTHER CONSULTEES

- 7.3. CPRE: **Objects.** The site would fail to meet the majority of the criteria of Policy BSC6 of the Cherwell Local Plan 2011 – 2031. There are likely to be better sites available within the district and the Council should identify appropriate sites in the next stage of the Local Plan.

- 7.4. CDC ENVIRONMENTAL HEALTH: **No objections**, subject to conditions requiring that:

one of the caravans stationed on each pitch shall be a static caravan or mobile home, and that static caravan or mobile home shall comply with the specification of paragraphs 4.8 and 4.9.4 in British Standard BS 3632:2015 – Residential park homes – Specification; and

No external lighting shall be installed on the site, other than in accordance with a scheme, including details of the position, height and type of lights, which has been submitted to and approved in writing by the Local Planning Authority.

- 7.5. OCC HIGHWAYS: **Objects**, as the proposals do not provide for safe and suitable access for all people, which is contrary to NPPF.

- 7.6. CDC LANDSCAPES: Comments that landscaping would need to be implemented, with existing hedgerows retained and maintained and a new hedgerow implemented on the eastern boundary.

- 7.7. CDC PLANNING POLICY: **No objections**, stating that there is currently a sufficient supply of gypsy and traveller pitches based on the most up to date evidence on need therefore there is no pressing need for additional land to be released at this time. Detailed issues to be considered include whether a satisfactory living environment could be secured and potential impacts on biodiversity and visual impact and effect on landscape character.

- 7.8. CDC STRATEGIC HOUSING: **No objections.**

### **8. RELEVANT PLANNING POLICY AND GUIDANCE**

- 8.1. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.

- 8.2. The Cherwell Local Plan 2011-2031 - Part 1 was formally adopted by Cherwell District Council on 20th July 2015 and provides the strategic planning policy framework for the District to 2031. The Local Plan 2011-2031 – Part 1 replaced a number of the ‘saved’ policies of the adopted Cherwell Local Plan 1996 though

many of its policies are retained and remain part of the development plan. The relevant planning policies of Cherwell District's statutory Development Plan are set out below:

#### CHERWELL LOCAL PLAN 2011 - 2031 PART 1 (CLP 2031 Part 1)

- PSD1 - Presumption in Favour of Sustainable Development
- BSC6 - Travelling communities
- ESD1 - Mitigating and Adapting to Climate Change
- ESD6 - Sustainable Flood Risk Management
- ESD7 - Sustainable Drainage Systems
- ESD10 - Protection and Enhancement of Biodiversity and the Natural Environment
- ESD13 - Local Landscape Protection and Enhancement
- ESD15 - The Character of the Built and Historic Environment

#### CHERWELL LOCAL PLAN 1996 SAVED POLICIES (CLP 1996)

- C8 - Sporadic development in the countryside
- C28 - Layout, design and external appearance of new development
- ENV1 - Development likely to cause detrimental levels of pollution

### 8.3. Other Material Planning Considerations

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)
- Planning Policy for Traveller Sites (August 2015) (PPTS). This document sets out the Government's planning policy specifically for traveller sites and should be read in conjunction with the NPPF
- Designing Gypsy & Traveller Sites (2008) (although this document was withdrawn by the Government on 1st September 2015, it remains a useful starting point for considering the design and layout of proposed travellers sites)
- Gypsies and Travellers: Planning Provisions – Briefing Paper January 2016. Provides useful background information and summarises changes to the updated PPTS. It is noted however that as this is only a Briefing Paper; it carries very limited weight and should not be relied upon as a substitute for specific advice
- CDC Annual Monitoring Report 2019 (AMR) (December 2019)
- Cherwell, West Oxfordshire and South Northamptonshire Gypsy and Traveller Needs Assessment (2012/2013) (GTAA 2012/2013)
- Cherwell, Oxford City, South Oxfordshire and Vale of White Horse Gypsy, Traveller and Travelling Showpeople Accommodation Assessment (2017) (GTAA 2017)
- The European Convention on Human Rights (ECHR) Articles 8 and Article 14 of Protocol 1
- Housing Act (2004)
- The Equality Act (2010)

## 9. APPRAISAL

The key issues for consideration in this case are:

- Principle of Development
- Need for pitches
- Visual Impact and Effect on Landscape Character;

- Residential Amenity;
- Ecological Impact;
- Highway Safety;
- Flooding Risk and Drainage;
- Other Matters

### Principle of Development

#### *Policy Context*

- 9.1. The National Planning Policy Framework (NPPF) states that the purpose of the planning system is to contribute towards the achievement of sustainable development. This required the economic, social and environmental objectives to be pursued in mutually supportive ways. Planning law requires planning applications to be determined in accordance with the development plan unless material considerations indicated otherwise.
- 9.2. The most relevant policies to the principle of development are Policies ESD1 and BSC6. Policy ESD1 states that to mitigate the impact of development on climate change, growth will be delivered in the most sustainable locations (as defined in the local plan) and reduce the need to travel. Policy BSC 6 of the Cherwell Local Plan 2011-2031 Part 1 builds on this in relation travellers' pitches in the District and in order to provide and maintain a five-year supply of deliverable traveller sites. This states that allocations will be made in Local Plan Part 2 and planning permissions will be granted for suitable traveller sites. Policy BSC6 also states that locations outside the AONB and Green Belt will be considered and: *"In identifying suitable sites with reasonable accessibility to services and facilities the following sequential approach will be applied:*
- *Within 3km road distance of the built-up limits of Banbury, Bicester or a Category A village.*
  - *Within 3km road distance of a Category B village and within reasonable walking distance of a regular bus service to Banbury or Bicester or to a Category A village.*

#### *Assessment*

- 9.3. The site is not located within an area of Green Belt or AONB. The site is located approximately 2500m by road from the centre of Arncott, a Category A Settlement under Policy Villages 1. Therefore, the site meets the first criteria relating to the sequential test for the location of sites. However, this does not mean the proposal is *de facto* acceptable in principle as Policy BSC6 also requires the assessment of the suitability of sites against the criteria below:

The following criteria will also be considered in assessing the suitability of sites:

- Access to GP and other health services;
- Access to schools
- Avoiding areas at risk of flooding;
- Access to the highway network;
- The potential for noise and other disturbance;

- The potential for harm to the historic and natural environment;
- The ability to provide a satisfactory living environment;
- The need to make efficient and effective use of land;
- Deliverability, including whether utilities can be provided;
- The existing level of local provision;
- The availability of alternatives to applicants.

9.4. In this case Arncott is a Category A settlement, which are amongst the most sustainable villages in the district, these range considerably in terms of their size and level of facilities/services. Arncott has a shop, chapel, village hall, sports field and one pub.

9.5. The Parish Council and a number of the residents of Piddington have raised concerns in relation to the sustainability and suitability of the site. It is recognised by officers that Arncott is not the most sustainable of the Category A villages as it does not have as many services and facilities as a number of the other Category A settlements. However, the village does have a regular bus service between Bicester and Oxford which also stops on the B4011 just 150m from the application site. The site is also located 3.5km from Ambrosden where there is a wider range of services offering a primary school, shop, public house and part time surgery.

9.6. Furthermore, in the appeal decision for 17/01962/F the Inspector considered that the nearby site was sustainable in this regard, as paragraph 103 of the National Planning Policy Framework (NPPF) explains that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. Moreover, the provision of a settled base for six gypsy families would facilitate access to health services and schooling, in line with paragraph 13 of PPTS. As the immediately adjacent site has been considered against the first two criteria of Policy BSC6 in an appeal from 2019, the site is considered to be acceptable in this regard.

9.7. Part of the site is located within an area of agricultural land that has a classification of 3. Government guidance states that the best and most versatile agricultural land is graded 1 to 3a. The highest grade goes to land that:

- gives the highest yield or output
- has the widest range and versatility of use
- produces the most consistent yield from a narrower range of crops
- requires less input

9.8. A number of the third party comments have highlighted that the land to which the application relates is grade 3 and 4 agricultural land. Grade 3 is good to moderate agricultural land and grade 4 is poor quality agricultural land. Concerns have been raised that the proposed development would lead to the loss of good quality agricultural land; however, the area of land is not an excessively large area of agricultural land and is not of the highest quality. Therefore, the change of use of this piece of land would not result in the loss of a significant amount of high quality agricultural land and officers consider the loss of agricultural land to an alternative use in this instance would not cause significant or demonstrable harm.

- 9.9. In relation to the national planning policy context for the provision of traveller sites this is contained within the August 2015 'Planning Policy for Traveller Sites' (PPTS) and should be read in conjunction with the NPPF. The Government's overarching aim is to ensure fair and equal treatment for travellers in a way that facilitates the traditional and nomadic way of life that they have whilst at the same time respecting the amenity and appearance of the settled community.
- 9.10. Policy C of the Government PPTS states that when assessing the suitability of sites in rural or semi-rural settings, local planning authorities (LPAs) should ensure that the scale of such sites does not dominate the nearest settled community. There is no definition of what would constitute the domination of a settlement. This issue has been raised a number of times by residents during the consultation process. Six pitches were approved under 17/01962/on the nearby site F and six further pitches are under consideration on that same site, which would total eighteen if this application were to be approved as well. If all of these schemes were approved and implemented, this would result in the provision of a relatively large site, with a small field intervening between the two sites. However, given the lack of definition of the domination of a settlement and the location of the sites approximately 1km away from Piddington, it is considered that the development would not dominate Piddington in this regard. In the case of this proposal, it is important in consideration of this matter to note that this is a proposed new site, in contrast to that proposed under 20/01122/F which has approval for 6no pitches.
- 9.11. Policy H states that LPAs should consider the existing level of need for site, the availability of alternative accommodation for applicants and their personal circumstances when considering proposals for gypsies and travellers sites and they should determine applications for sites from any travellers and not just those with local connections.
- 9.12. Policy H goes on to advise that LPAs should strictly limit new traveller site development in the open countryside that are away from existing settlements or outside areas allocated in the development plan. The application site is located outside of any settlement, not having any strong relationship with the form of any village and clearly separated by open fields.
- 9.13. Given the above, the location of the site in relation to other settlements (as outlined above), the conclusions of the Inspector in the recent appeal and the fact that Policy BSC6 has the 3km criteria in relation to Category A villages, on balance it is not considered that the proposal can be said to be 'away from existing settlements' so would not conflict with national policy in that respect. It is recognised that this conclusion stands somewhat at odds with the conclusion above that the proposal would not dominate the settled community because it is c. 1km away.
- 9.14. Policy H goes on to state that in rural areas sites development should respect the scale of, and not dominate, the nearest settled community and when considering applications LPAs should attach weight to the following matters:
- a) effective use of previously developed (brownfield), untidy or derelict land;
  - b) sites being well planned or soft landscaped in such a way as to positively enhance the environment and increase its openness;
  - c) promoting opportunities for healthy lifestyles, such as ensuring adequate landscaping and play areas for children;

- d) not enclosing sites with excessive hard landscaping, high walls or fences that the impression may be given that the site and its occupants are deliberately isolated from the rest of the community.

#### Need for pitches

- 9.15. The Local Planning Authority is required to make an assessment of the needs for gypsy and traveller sites within the district and to identify and update annually a 5-year supply of specific deliverable sites. Paragraph 27 of the PPTS states that if a local planning authority cannot demonstrate an up to date 5-year supply of deliverable sites, this should be a significant material consideration in any subsequent planning decision when consideration applications for the grant of temporary planning permission.
- 9.16. Policy BSC6 of the Local Plan 2015 states that the council will provide 19 (net) additional pitches to meet the needs of Gypsy and Travellers from 2012 to 2031.
- 9.17. A Gypsy, Traveller and Travelling Showpeople Accommodation Assessment (GTAA) for Cherwell, Oxford, South Oxfordshire and Vale of White Horse Councils was published in June 2017. Since its publication the GTAA 2017 has informed the examination and adoption of Local Plans covered by the study's area.
- 9.18. It identifies a new objective assessment of need for each authority based on the definitions of Gypsies and Travellers and Travelling Showpeople for planning purposes (Annex 1 of the Government's Planning Policy for Traveller Sites (PPTS, 2015)). It identifies a need for 7 additional pitches for households for Cherwell by 2031 that meet the planning definition.
- 9.19. The Assessment also suggests that the overall need could rise by up to 12 pitches if further information be made available to the Council that will allow for the planning definition to be applied to the unknown households. These are households where it was not possible to distinguish whether or not they meet the planning definition. Additionally, a potential need for 8 pitches is highlighted due to the closure of a site (Smiths Caravan Park), which could increase the need by up to a further 20 pitches.
- 9.20. The Assessment advises that for 'unknown' travellers 'it would not be appropriate when producing a robust assessment of need to make any firm assumptions about whether or not they meet the planning definition...' based on interviews that have taken place (para. 7.28 of the study).
- 9.21. The AMR 2019 presents a 5-year land supply calculation based on the need identified in support of the adopted Policy BSC6 and a calculation based on the latest GTAA 2017.
- 9.22. As noted above since the preparation of the need evidence/study supporting adopted Policy BSC6, the Government set out planning policies and requirements for Gypsy and Traveller sites in 'Planning Policy for Traveller Sites' (PPTS, 2015). The GTAA 2017 is more up to date and consistent with national policy set out in PPTS 2015.
- 9.23. The published five-year land supply position for gypsies and travellers based on the GTAA methodology as reported in the 2019 AMR is 3.8 years for the period 2020-2025 commencing 1 April 2020 (shortfall of 3 pitches). This does not include an allowance for 'unknown' need but includes the potential need for 8 pitches arising from the Smiths site (a site that was previously included in the district's supply).

- 9.24. The above calculation takes into account planning permissions for a total of 10 new pitches during 2019/20 (4 pitches at Summer Place, Launton and 6 pitches at Widnell Lane, Piddington). A separate permission for 3 new pitches was also granted towards the end of 2019/20 which follows the publication of the 2019 AMR (Land West of M40, Kirtlington Road, Chesterton). Inclusion of the 3 new pitches would mean that the Council can demonstrate a 5-year supply of gypsy and traveller pitches based on the most up to date assessment of need.
- 9.25. The application site is proposed to be used as a site for six families. A document detailing the personal circumstances of the occupants of the site has been submitted in support of the application. If the Council were to approve the application, in order to ensure that the site was only occupied by households meeting the revised definition of gypsy/traveller a planning condition can be used in line with Government guidance. Officers are therefore satisfied that the application is for a site that would be used by gypsies/travellers.
- 9.26. The Council considers that there is currently a sufficient supply of gypsy and traveller pitches based on the most up to date evidence on need therefore there is no pressing need for additional land to be released at this time. In this instance there are also significant concerns as to whether this would be an appropriate location for such development, having regard to whether the development would cause harm to the historic and natural environment. The principle of development is therefore considered unacceptable in this instance.

#### *Conclusion*

- 9.27. The proposed development fails to comply with Policy BSC6 of the Cherwell Local Plan 2011 – 2031 Part 1 and Government guidance contained within the NPPF due to the harm to the natural environment.

#### Visual impact and Effect on Landscape Character

##### *Policy context*

- 9.28. The NPPF recognising the intrinsic character and beauty of the open countryside. ESD13 of the Cherwell Local Plan Part 1 notes that development will be expected to respect and enhance local landscape character, securing appropriate mitigation where damage to the local landscape character cannot be avoided. Policy ESD13 also states that proposals will not be permitted if they would cause undue visual intrusion into the open countryside or be inconsistent with local character.
- 9.29. Policy ESD15 of the Cherwell Local Plan Part 1 states that: *“New development will be expected to complement and enhance the character of its context through sensitive siting, layout and high quality design. All new development will be required to meet high design standards.”*
- 9.30. Saved Policy C28 of the Cherwell Local Plan 1996 reflects Government guidance in relation to the design of new development by seeking to ensure that such development is in harmony with the general character of its surroundings and is sympathetic to the environmental context of the site and its surroundings. Saved Policy C8 of the Cherwell Local Plan 1996 seeks to protect the character of the open countryside from sporadic development.

##### *Assessment*

- 9.31. The site is currently bounded by a mature native hedgerow to the northern boundary which measures approximately 2.5 metres in height. The existing hedgerow

currently screens views into the site from Widnell Lane, although views would be achieved into the site from the proposed access, which would create a gap in the hedge. There are limited views of the site from the wider surroundings. The site cannot be seen from the B4011 due to a high mature hedgerow which bounds the field boundary adjacent to this road. Furthermore, due to the flat nature of the site itself and the surrounding landscape along with the mature hedgerow boundary features in the locality views into the site are limited only to localised views from Widnell Lane and distant views of the site from the surrounding area are limited.

- 9.32. Notwithstanding the above, the site would be located on agricultural land in the open countryside. Criterion (f) of Policy BSC6 requires the potential for harm to the natural environment to be considered. In the appeal decision for 17/01962/F, the Inspector considered that the formation of six pitches and the stationing of caravans on the site would involve the encroachment of development into the field and that this would cause some harm to the character and appearance of the area. The Inspector considered that the appeal development failed to comply with Policies ESD13 and ESD15 of the Cherwell Local Plan 2011 – 2031 Part 1 and Policy C28 of the Cherwell Local Plan 1996.
- 9.33. The application site is additional to that appeal site and the Inspector's conclusion applies here as it did to the appeal site, i.e. the proposal would cause harm to the character and appearance of the area. The proposed development would result in an urbanisation of the countryside and the amount of harm caused would be similar to that caused in the case of the appeal proposal, albeit that the cumulative harm arising from two separate sites, close to each other, adds to the aggregate harm caused by each of the two sites potentially greater larger than the appeal site.

#### *Conclusion*

- 9.34. It is therefore considered that the development would cause harm to the character and appearance of the area, due to the urbanisation and intrusion into the open countryside. The proposed development therefore fails to comply with Policies ESD13 and ESD15 of the Cherwell Local Plan 2011 – 2031 Part 1, Policies C8 and C28 of the Cherwell Local Plan 1996 and Government guidance contained within the NPPF.

#### Residential amenity

##### *Policy context*

- 9.35. The NPPF requires new development provide a high standard of amenity for existing and future occupants. Chapter 15 of the NPPF advises that decision should prevent new development from being subject to unacceptable levels of noise pollution and new development should be appropriate for its location taking into account the likely effects on living conditions. In doing so decisions should mitigate and reduce to a minimum potential adverse impacts resulting from noise and avoid noise giving rise to 'significant adverse impacts' on health and the quality of life.
- 9.36. Saved Policy ENV1 of the adopted Cherwell Local Plan sets out that development which is likely to cause materially detrimental levels of noise, vibration, smell, smoke other types of environmental pollution will not normally be permitted. Further, where a source of pollution is already established and cannot be abated, the Council will seek to limit its effect by ensuring that development within the affected area maintains a suitable distance from the pollution source. Policy ESD15 of the Cherwell Local Plan Part 1 states that: "*Development should consider the amenity of both existing and future development, including matters of privacy, outlook, natural lighting, ventilation, and indoor and outdoor space.*"

### *Assessment*

- 9.37. With regard to the layout of the proposal, the proposed pitches would measure a minimum of 19m by 29m, which is considered by officers to be of a sufficient size to allow for the siting of a mobile home and touring van and would allow for privacy and amenity space for each pitch. The proposed layout is not considered to result in overcrowding of the site.
- 9.38. The site is located approximately 300 metres from a Ministry of Defence (MoD) training area known as Piddington Training Area. This training area is used by the MOD for a variety of exercises using small arms ammunition (Blank) and the use of pyrotechnics including illumination types and noise simulation. The site is used frequently during weekdays and at weekends for a variety of exercises. This type of use which generates noise and disturbance could cause undue harm to the residents of the proposed site, particularly due to the nature of the residential caravans which offer little noise attenuation due to their lightweight construction.
- 9.39. The MoD provided evidence with the application on the adjacent site and at the inquiry for the appeal. The Inspector concluded that whilst the operations at the training ground would impinge on the amenities of future occupiers, the development would not give rise to significant adverse impacts on health and the quality of life, as is the test set out in the NPPF. The application site is slightly further away from the MoD training ground than the appeal scheme, however the impacts would be similar.
- 9.40. The Environmental Health Officer (EHO) has offered no objections to the scheme, subject to a condition that One of the caravans stationed on each pitch shall be a static caravan or mobile home, and that static caravan or mobile home shall comply with the specification of paragraphs 4.8 and 4.9.4 in British Standard BS 3632:2015 – Residential park homes – Specification, which relates to noise standards. In light of the Inspector's decision and subject to this condition, it is considered that the development would be acceptable in this regard.
- 9.41. The EHO has requested a condition relating to no lighting being installed on the site. This condition is considered to be acceptable.

### *Conclusion*

- 9.42. Subject to conditions, the proposed development would not cause harm to the amenities of neighbours and therefore complies with Policy ESD15 of the Cherwell Local Plan 2011 – 2031, Saved Policy ENV1 of the Cherwell Local Plan 1996 and Government guidance contained within the NPPF.

### Ecology Impact

#### *Legislative context*

- 9.43. The Conservation of Habitats and Species Regulations 2017 consolidate the Conservation of Habitats and Species Regulations 2010 with subsequent amendments. The Regulations transpose European Council Directive 92/43/EEC, on the conservation of natural habitats and of wild fauna and flora (EC Habitats Directive), into national law. They also transpose elements of the EU Wild Birds Directive in England and Wales. The Regulations provide for the designation and protection of 'European sites', the protection of 'European protected species', and the adaptation of planning and other controls for the protection of European Sites.

- 9.44. Under the Regulations, competent authorities i.e. any Minister, government department, public body, or person holding public office, have a general duty, in the exercise of any of their functions, to have regard to the EC Habitats Directive and Wild Birds Directive.
- 9.45. The Regulations provide for the control of potentially damaging operations, whereby consent from the country agency may only be granted once it has been shown through appropriate assessment that the proposed operation will not adversely affect the integrity of the site. In instances where damage could occur, the appropriate Minister may, if necessary, make special nature conservation orders, prohibiting any person from carrying out the operation. However, an operation may proceed where it is or forms part of a plan or project with no alternative solutions, which must be carried out for reasons of overriding public interest.
- 9.46. The Regulations make it an offence (subject to exceptions) to deliberately capture, kill, disturb, or trade in the animals listed in Schedule 2, or pick, collect, cut, uproot, destroy, or trade in the plants listed in Schedule 4. However, these actions can be made lawful through the granting of licenses by the appropriate authorities by meeting the requirements of the 3 strict legal derogation tests:
- (1) Is the development needed to preserve public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment?
  - (2) That there is no satisfactory alternative.
  - (3) That the action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range.
- 9.47. The Regulations require competent authorities to consider or review planning permission, applied for or granted, affecting a European site, and, subject to certain exceptions, restrict or revoke permission where the integrity of the site would be adversely affected. Equivalent consideration and review provisions are made with respects to highways and roads, electricity, pipe-lines, transport and works, and environmental controls (including discharge consents under water pollution legislation).

#### *Policy Context*

- 9.48. Paragraph 170 of the NPPF states that Planning policies and decisions should contribute to and enhance the natural and local environment by (amongst others): a) protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils; and d) minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures.
- 9.49. Paragraph 175 states that when determining planning applications, local planning authorities (LPAs) should apply the following principles: a) if significant harm to biodiversity resulting from a development cannot be avoided, adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused; d) development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to incorporate biodiversity improvements in and around developments should be encouraged, especially where this can secure measurable net gains for biodiversity.

- 9.50. Paragraph 180 of the NPPF states that planning decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so they should (amongst others) limit the impact of light pollution from artificial light on local amenity, intrinsically dark landscapes and nature conservation.
- 9.51. Policy ESD10 of the Cherwell Local Plan 2011-2031 lists measures to ensure the protection and enhancement of biodiversity and the natural environment, including a requirement for relevant habitat and species surveys and associated reports to accompany planning applications which may affect a site, habitat or species of known ecological value.
- 9.52. Policy ESD11 is concerned with Conservation Target Areas (CTAs), and requires all development proposals within or adjacent CTAs to be accompanied by a biodiversity survey and a report identifying constraints and opportunities for biodiversity enhancement.
- 9.53. These policies are both supported by national policy in the NPPF and also, under Regulation 43 of Conservation of Habitats & Species Regulations 2017, it is a criminal offence to damage or destroy a breeding site or resting place, unless a licence is in place.
- 9.54. The Planning Practice Guidance dated 2014 post-dates the previous Government Circular on Biodiversity and Geological Conservation (ODPM Circular 06/2005), although this remains extant. The PPG states that LPAs should only require ecological surveys where clearly justified, for example if there is a reasonable likelihood of a protected species being present and affected by development. Assessments should be proportionate to the nature and scale of development proposed and the likely impact on biodiversity.

#### *Assessment*

- 9.55. Natural England's Standing Advice states that an LPA only needs to ask an applicant to carry out a survey if it's likely that protected species are:
- present on or near the proposed site, such as protected bats at a proposed barn conversion affected by the development

It also states that LPA's can also ask for:

- a scoping survey to be carried out (often called an 'extended phase 1 survey'), which is useful for assessing whether a species-specific survey is needed, in cases where it's not clear which species is present, if at all
  - an extra survey to be done, as a condition of the planning permission for outline plans or multi-phased developments, to make sure protected species aren't affected at each stage (this is known as a 'condition survey')
- 9.56. The Standing Advice sets out habitats that may have the potential for protected species, and in this regard the site is close to a pond and there are mature hedgerows on the northern, western and southern boundaries of the site, with the access created in the northern boundary with the removal of a strip of hedgerow and therefore has the potential to be suitable habitat for bats, great crested newts and breeding birds.

- 9.57. In order for the LPA to discharge its legal duty under the Conservation of Habitats and Species Regulations 2017 when considering a planning application where EPS are likely or found to be present at the site or surrounding area, local planning authorities must firstly assess whether an offence under the Regulations is likely to be committed. If so, the LPA should then consider whether Natural England (NE) would be likely to grant a licence for the development. In so doing the authority has to consider itself whether the development meets the 3 derogation tests listed above.
- 9.58. In respect of planning applications and the Council discharging of its legal duties, case law has shown that if it is clear/ very likely that NE will not grant a licence then the Council should refuse planning permission; if it is likely or unclear whether NE will grant the licence then the Council may grant planning permission.
- 9.59. Having regard to the LPA's duty under the Conservation of Habitats and Species Regulations 2017, the lack of a suitable protected species/ecological survey and proposed mitigation strategy means that it has not been demonstrated that the proposal will not cause harm to any protected species or its habitat which is reasonably likely to be present and affected by the development. The proposal is therefore contrary to Policy ESD10 of the CLP 2031 Part 1, advice contained in the PPG and Natural England's Standing Advice, and section 15 of the National Planning Policy Framework.

#### Highway safety

##### *Policy context*

- 9.60. National and local policy looks to promote sustainable transport options whilst ensuring that new development proposals do not cause harm to the safety of the highway network.
- 9.61. The NPPF (Para. 108) advises of the need to have due regard for whether new development includes:
- appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location;
  - safe and suitable access to the site can be achieved for all users; and
  - any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree.
- 9.62. Policy ESD15 of the CLP 2031 states that: *“New development proposals should be designed to deliver high quality safe, attractive, durable and healthy places to live and work in. Development of all scales should be designed to improve the quality and appearance of an area and the way it functions.”*
- 9.63. Policy SLE4 of the CLP 2031 states that: *“New development in the District will be required to provide financial and/or in-kind contributions to mitigate the transport impacts of development.”* Policy SLE4 also states that: *“All development where reasonable to do so, should facilitate the use of sustainable modes of transport to make the fullest possible use of public transport, walking and cycling...Development which is not suitable for the roads that serve the development and which have a severe traffic impact will not be supported.”*

##### *Assessment*

- 9.64. A number of concerns have been raised in third party comments in relation to highway safety issues. The Highways Officer has objected on the grounds that the proposals do not provide for safe and suitable access for all people, which is contrary to NPPF, by virtue of the lack of a lit footway on Widnell Road. The previous application was not refused on this basis and the Inspector did not consider that this would be a significant issue, given that the majority of trips from the site would be in private motor vehicles. It is therefore considered that the application cannot be refused on this basis.
- 9.65. The Highways Officer has not raised any concerns with the provision of a new access onto Widnell Road, other than stating that conditions would be required to ensure further detail was submitted. Given that the Highways Officer has not objected in this regard, it is considered that the new access would not cause harm to safety of the local highway network.

#### *Conclusion*

- 9.66. It is therefore considered that the proposed development would not cause harm to the safety of the local highway network and therefore complies with Policies SLE4 and ESD15 of the Cherwell Local Plan 2011 – 2031 and Government guidance contained within the NPPF.

#### Flood risk and drainage

##### *Policy context*

- 9.67. Policy ESD6 of the CLP 2015 essentially replicates national policy contained in the NPPF with respect to assessing and managing flood risk. In short, this policy resists development where it would increase the risk of flooding and seeks to guide vulnerable developments (such as residential) towards areas at lower risk of flooding and further, that development should be safe and remain operational in the event of flooding. In addition to safeguarding floodplains from development, opportunities will be sought to restore natural river flows and floodplains, increasing their amenity and biodiversity value.
- 9.68. Policy ESD7 of the CLP 2015 requires the use of Sustainable Drainage Systems (SuDS) to manage surface water drainage systems. This is with the aim to manage and reduce flood risk in the District.

##### *Assessment*

- 9.69. In terms of assessing the potential flood-risk the proposals would constitute 'Highly Vulnerable' development. The proposals are not supported by any assessment of flood-risk. Policy ESD6 of the CLP 2031 states that site specific flood risk assessments will be required to accompany development proposals in the following situations:
- All development proposals located in flood zones 2 or 3
  - Development proposals of 1 hectare or more located in flood zone 1
  - Development sites located in an area known to have experienced flooding problems
  - Development sites located within 9m of any watercourses.

- 9.70. Flood risk assessments should assess all sources of flood risk and demonstrate that:
- There will be no increase in surface water discharge rates or volumes during storm events up to and including the 1 in 100 year storm event with an allowance for climate change (the design storm event)
  - Developments will not flood from surface water up to and including the design storm event or any surface water flooding beyond the 1 in 30 year storm event, up to and including the design storm event will be safely contained on site.
- 9.71. Development should be safe and remain operational (where necessary) and proposals should demonstrate that surface water will be managed effectively on site and that the development will not increase flood risk elsewhere, including sewer flooding. The foul sewerage for the site would be provided by way of two water treatment plant, of which details have been submitted with the application.
- 9.72. Whilst the site is identified by the Environment Agency as being in Flood Zone 1 the Oxfordshire Flood Toolkit records show the site to be in an area with a high chance of flooding from surface water (a fact corroborated in a significant number of third party representations from local residents).
- 9.73. Without knowing the extent of any site specific flood-risk and the geology of the area it cannot be established as to what form of drainage would be appropriate for the site or if indeed the site could be appropriately drained to ensure that it would not be to the detriment of the operation of the site or exacerbate flood-risk on surrounding land.
- 9.74. It is considered that through the lack of appropriate assessment of flood-risk or drainage requirements the applicants have failed to demonstrate that the proposals would not increase the flooding risk on the site or elsewhere and would remain operational in the event of flooding and therefore does not accord with Policies ESD6 and ESD7 of the Cherwell Local Plan (2011-2031) Part 1.

#### Human Rights and Equalities

- 9.75. The Human Rights Act 1998 (“HRA”) sets out fundamental freedoms which have been laid out by the European Convention on Human Rights (“ECHR”). In making any decisions, Cherwell District Council (“the Council”) should have due regard to and take into account any implications that may arise under the HRA. As a public authority, it is unlawful for the Council to act in a manner which is incompatible with the ECHR.
- 9.76. The rights under the ECHR which the Council views as being the most likely to affect planning matters are: Article 6 (the right to a fair trial); Article 8 (right to respect for private and family life); Article 14 (prohibition of discrimination); and Article 1 of the First Protocol (protection of property).

#### *Article 6*

- 9.77. Officers have considered these matters and have resolved that, whilst there are potential rights in play, these will not be affected by the application due to the application being publicised by way of neighbour letter, site notice and in the local press giving affected third parties the opportunity to comment on the application and their views taken into account when considering the application. In this case any comments/concerns raised by third parties are listed above and have been taken

into account in assessing the application. In addition, third parties were invited to the public meeting of the Planning Committee and had the opportunity to speak. Furthermore, should a third party be concerned about the way the application was decided they could complain to the Local Government Ombudsman or if they question the lawfulness of a decision can appeal to the Courts for Judicial Review of the application.

#### *Article 8 and Article 1 of the First Protocol*

- 9.78. Officers have considered the duties under both Article 8 and Article 1 of the First Protocol and have resolved that the application does respect the private and family life of neighbours and does not fail to protect the neighbours' property.
- 9.79. Officers have considered that, in the event that the application is granted planning permission, there will not be any discrimination (or potential discrimination) on neighbours.

#### *Duty under The Equalities Act 2010*

- 9.80. S149 of the Equalities Act 2010 ("EA") sets out what is known as the Public Sector Equality Duty ("PSED"). Under the PSED, the Council, as a public authority, must have due regard to the need to, inter alia, advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it and has to foster good relations between persons who share a relevant protected characteristic and persons who so not share it. The protected characteristics to which the PSED refers are: (a) age; (b) disability; (c) gender reassignment; (d) pregnancy and maternity; (e) race; (f) religion or belief; (g) sex; (h) sexual orientation.
- 9.81. Officers have considered the application and resolved that none of the protected characteristics is affected or potentially affected by the application.

## **10. PLANNING BALANCE AND CONCLUSION**

- 10.1. The application seeks planning permission for the change of use of land to a residential caravan site for 6no gypsy families. The site is located approximately 2.5km from the category A village of Arncott and benefits from suitable access to the local and wider highway network so can be considered under Policy BSC6 of the Local Plan.
- 10.2. In assessing the sustainability and suitability of the site the criteria set out within Local Plan Policy BSC6 is relevant in determining the most suitable locations for gypsy and traveller sites.
- 10.3. Criterion (a) considers access to GP and other health services; the nearest NHS GP surgery to the site would be in Ambrosden and is accessible from the site, given the findings of the Inspector in the recent appeal.
- 10.4. Criterion (b) considers access to schools; the nearest primary school again is located within Ambrosden and is accessible from the site.
- 10.5. Criterion (c) seeks to avoid areas at risk of flooding. The site is identified as being at risk from surface water flooding and in the absence of any appropriate flood-risk assessment it is unclear as to whether the proposals would not increase the flooding risk on the site or elsewhere and would remain operational in the event of flooding; and therefore unacceptable in this regard.

- 10.6. Criterion (d) considers the suitability of the site in relation to access to the existing highway network; in this respect the proposal is considered to be appropriately located without demonstrable harm caused to highway safety.
- 10.7. Criterion (e) considers the potential for noise and disturbance. The site is considered acceptable in regard to the impact on neighbouring uses. The site would be in close proximity of the MoD training ground; however, given the findings of the Inspector at the appeal, it is considered that the impact would not be so significant to justify a reason for refusal in this regard.
- 10.8. Criterion (f) seeks to ensure harm to the historic and natural environment is limited. The proposal would not adversely impact on any heritage assets. However there would be harm to the rural character and appearance of the site and locality in the immediate vicinity of the site. In the absence of an ecological survey, it is considered that the development would cause harm in this regard too. This harm would be significant and weighs against the development. For the reasons set out in this report it is considered that the harm to the character and appearance of the area would be greater than that caused by the additional 6no pitches proposed on the nearby site assessed under application ref. 20/01122/F.
- 10.9. Criterion (g) seeks to ensure that proposals provide for a satisfactory living environment. In this case due to the potential flood-risk of the site this is not considered to be met as discussed above.
- 10.10. Criterion (h) seeks to ensure that efficient and effective use of land is made. In this case the current proposal would result in the development of a green field site. The agricultural land is rated moderate to good (grade 3); however, it is considered that the amount of agricultural land lost and the quality of the land would not be a significant loss.
- 10.11. Criterion (i) considers the likely deliverability of the proposal, including whether utilities can be provided on the site. The applicant's agent states that water and electricity already serves the site. It is not proposed to connect to mains drainage however this has not been justified. On balance it is considered that this criterion has been met.
- 10.12. Criterion (j) looks at the existing level of local provision for gypsy and travellers across the Cherwell District. Officers consider that there is currently no pressing need for further land to be released with a sufficient supply of pitches available within the district. This is a different position that the Council finds itself in compared to that when it faced the recent appeals at Piddington and Chesterton.
- 10.13. Criterion (k) considers the availability of alternative sites for the applicant. In this case no alternative sites are allocated in the Local Plan and little progress has been made in this regard. The applicant contends that there are no alternative sites available however has not commented on recent permissions within the district or the availability of such sites.
- 10.14. In conclusion, the proposal is not considered to dominate the nearest settled community and is located relatively well located in terms of access to facilities within the villages of Arccott and Ambrosden and further would not have any significant detrimental impacts on highway safety or residential amenity of existing residential properties; these factors weigh in support of the application. However, the proposal would lead to significant harm to the rural character and appearance of the countryside and would be significant where it occurs. The proposal would cause harm to the rural character and appearance of the area and local ecology and the

proposals are likely to result in the exacerbation of flood-risk at the site and on surrounding land and these factors weigh against the proposals.

10.15. Overall, when assessing the development as a whole, the identified harm is considered to outweigh benefits of the scheme. It is therefore recommended that planning permission be refused.

## **11. RECOMMENDATION**

**RECOMMENDATION - REFUSAL FOR THE REASONS SET OUT BELOW**

### REASONS FOR REFUSAL

1. The proposed development, by virtue of its siting in the open countryside, overall scale and appearance, would have an urbanising effect on the open countryside, and would result in significant and demonstrable harm to the rural character and appearance of the area. The proposal is therefore contrary to Policies ESD13 and ESD15 of the Cherwell local Plan Part 1, saved Policies C8 and C28 of the Cherwell local Plan 1996 and Government guidance within the National Planning Policy Framework.
2. The planning application has not been supported by adequate information to demonstrate the impact of the proposed development on protected species has been properly understood and the requirement for mitigation to secure a net gain in biodiversity can be met. The proposal is therefore contrary to Policy ESD10 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.
3. A Flood Risk Assessment has not been submitted with this application. Therefore, an assessment has not been made of the flood risks arising from the proposed development and it has not been clearly demonstrated that the development and its future users will be safe over the lifetime of the development. The proposal is therefore contrary to Policy ESD6 of the Cherwell Local Plan Part 1 and Government guidance contained within the National Planning Policy Framework.

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